

JS 44C/SDNY
REV. 1/2008

JUDGE MARRERO

CIVIL COVER SHEET

09 CV

7960

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

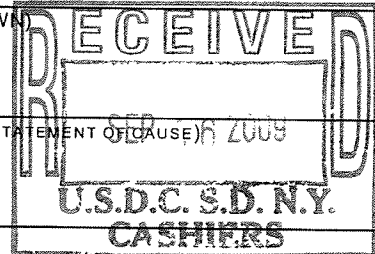
LOUIS P. PSIHAYOS

DEFENDANTS

APPLE, INC. and APPLE COMPUTERS, INC.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Dan Nelson (DN4940)
The Nelson Law Firm
100 Park Avenue, 18th Floor
New York, New York 10017

ATTORNEYS (IF KNOWN)



CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Copyright Infringement, 17 U.S.C. §§101, et seq.

Has this or a similar case been previously filed in SDNY at any time? No? ☒ Yes? ☐ Judge Previously Assigned ☐

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- ☐ 110 INSURANCE
☐ 120 MARINE
☐ 130 MILLER ACT
☐ 140 NEGOTIABLE INSTRUMENT
☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
☐ 151 MEDICARE ACT
☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
☐ 160 STOCKHOLDERS SUITS
☐ 190 OTHER CONTRACT
☐ 195 CONTRACT PRODUCT LIABILITY
☐ 196 FRANCHISE

PERSONAL INJURY

- ☐ 310 AIRPLANE
☐ 315 AIRPLANE PRODUCT LIABILITY
☐ 320 ASSAULT, LIBEL & SLANDER
☐ 330 FEDERAL EMPLOYERS' LIABILITY
☐ 340 MARINE
☐ 345 MARINE PRODUCT LIABILITY
☐ 350 MOTOR VEHICLE
☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
☐ 360 OTHER PERSONAL INJURY

PERSONAL INJURY

- ☐ 362 PERSONAL INJURY - MED MALPRACTICE
☐ 365 PERSONAL INJURY PRODUCT LIABILITY
☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- ☐ 370 OTHER FRAUD
☐ 371 TRUTH IN LENDING
☐ 380 OTHER PERSONAL PROPERTY DAMAGE
☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

FORFEITURE/PENALTY

- ☐ 610 AGRICULTURE
☐ 620 OTHER FOOD & DRUG
☐ 625 DRUG RELATED SEIZURE OF PROPERTY
☐ 630 LIQUOR LAWS
☐ 640 RR & TRUCK
☐ 650 AIRLINE REGS
☐ 660 OCCUPATIONAL SAFETY/HEALTH
☐ 690 OTHER

LABOR

- ☐ 710 FAIR LABOR STANDARDS ACT
☐ 720 LABOR/MGMT RELATIONS
☐ 730 LABOR/MGMT REPORTING & DISCLOSURE ACT
☐ 740 RAILWAY LABOR ACT
☐ 790 OTHER LABOR LITIGATION
☐ 791 EMPL RET INC SECURITY ACT

IMMIGRATION

- ☐ 462 NATURALIZATION APPLICATION
☐ 463 HABEAS CORPUS- ALIEN DETAINEE
☐ 465 OTHER IMMIGRATION ACTIONS

BANKRUPTCY

- ☐ 422 APPEAL 28 USC 158
☐ 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS

- ☒ 820 COPYRIGHTS
☐ 830 PATENT
☐ 840 TRADEMARK

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 BLACK LUNG (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID TITLE XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
☐ 871 IRS-THIRD PARTY 26 USC 7609

OTHER STATUTES

- ☐ 400 STATE REAPPORTIONMENT
☐ 410 ANTITRUST
☐ 430 BANKS & BANKING
☐ 450 COMMERCE
☐ 460 DEPORTATION
☐ 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
☐ 480 CONSUMER CREDIT
☐ 490 CABLE/SATELLITE TV
☐ 810 SELECTIVE SERVICE
☐ 850 SECURITIES/ COMMODITIES/ EXCHANGE
☐ 875 CUSTOMER CHALLENGE 12 USC 3410
☐ 890 OTHER STATUTORY ACTIONS
☐ 891 AGRICULTURAL ACTS
☐ 892 ECONOMIC STABILIZATION ACT
☐ 893 ENVIRONMENTAL MATTERS
☐ 894 ENERGY ALLOCATION ACT
☐ 895 FREEDOM OF INFORMATION ACT
☐ 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
☐ 950 CONSTITUTIONALITY OF STATE STATUTES

REAL PROPERTY

- ☐ 210 LAND CONDEMNATION
☐ 220 FORECLOSURE
☐ 230 RENT LEASE & EJECTMENT
☐ 240 TORTS TO LAND
☐ 245 TORT PRODUCT LIABILITY
☐ 290 ALL OTHER REAL PROPERTY

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- ☐ 441 VOTING
☐ 442 EMPLOYMENT
☐ 443 HOUSING/ ACCOMMODATIONS
☐ 444 WELFARE
☐ 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
☐ 446 AMERICANS WITH DISABILITIES - OTHER
☐ 440 OTHER CIVIL RIGHTS

PRISONER PETITIONS

- ☐ 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
☐ 530 HABEAS CORPUS
☐ 535 DEATH PENALTY
☐ 540 MANDAMUS & OTHER
☐ 550 CIVIL RIGHTS
☐ 555 PRISON CONDITION

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ 10,000,000.00 OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

 IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1322, 1441)

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Louis P. Psihoyos
 443 Juniper Ave
 Boulder, Colorado 80304

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Apple Computers, Inc.
 1 Infinite Loop
 Cupertino, California 90017

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

 Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
 (DO NOT check either box if this a PRISONER PETITION.)

DATE 9/16/09 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

RECEIPT #

 [] NO
 [] YES (DATE ADMITTED Mo. 06 Yr. 09)
 Attorney Bar Code # DN4940

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

MAG. PECK

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE MARRERO 09 CV 7960

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUIS P. PSIHOYOS,

Plaintiff,

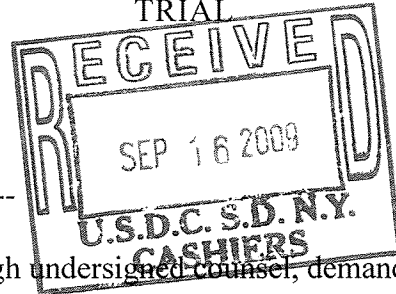
v.

APPLE, INC. and APPLE COMPUTERS, INC.,

Defendants.

Civil Action No.:

COMPLAINT AND
DEMAND FOR A JURY
TRIAL



Plaintiff, LOUIS P. PSIHOYOS, by and through undersigned counsel, demands a trial by jury of all claims and issues so triable, and, as and for his Complaint for Copyright Infringement against defendants APPLE, INC. and APPLE COMPUTERS, INC., hereby asserts and alleges as follows:

JURISDICTION AND VENUE

1. The plaintiff is a resident of the State of Colorado.
2. Defendant Apple, Inc., and its subsidiary, Apple Computers, Inc., (hereinafter collectively "Apple") are foreign corporations domiciled outside the State of New York but are corporations in good standing and licensed to transact lawful business within the State of New York and conduct substantial business in the Southern District of New York.
3. Jurisdiction for the plaintiff's claims lies with the United States District Court for the Southern District of New York pursuant to the Copyright Act of 1976, 17 U.S.C. §§101, et seq.
4. Venue is proper under 28 U.S.C. §1391 since the misconduct by Apple originated from copyright infringement information obtained from the plaintiff. Further,

Apple conducts business within the State of New York, and has infringed the plaintiff's copyright within the State of New York as described herein.

BACKGROUND FACTS

5. Apple is an American multinational corporation which designs and manufactures consumer electronics and software products.

6. Apple has created a "Top Sites" section in the Safari web browser on its Leopard generation operating system, which provides a way of seeing some of the most popular websites on the screen simultaneously.

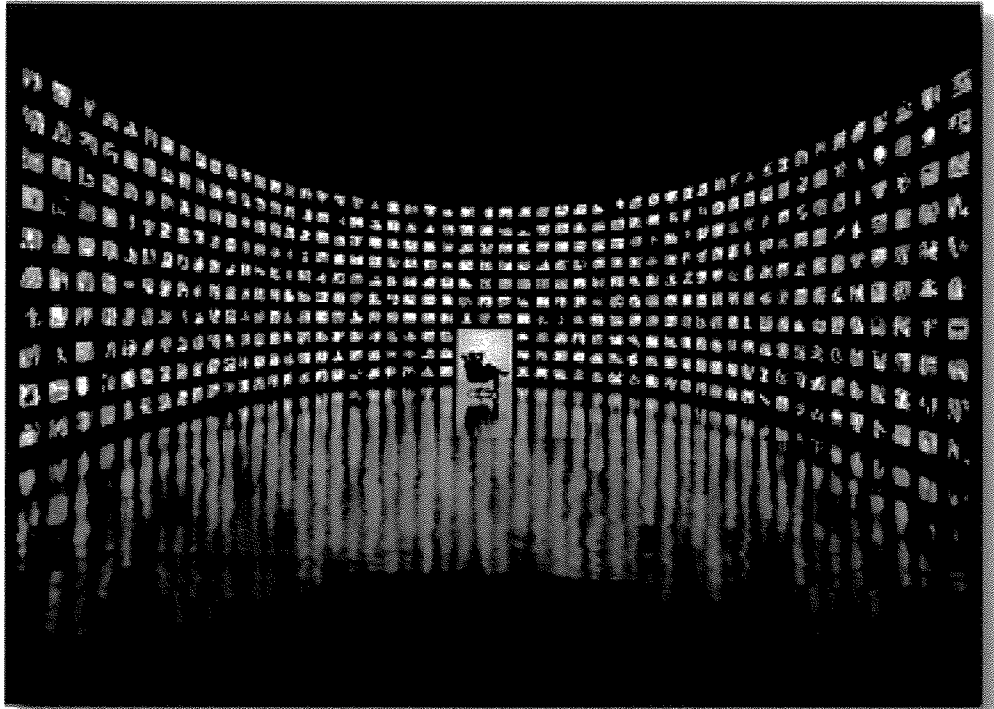
FIRST CAUSE OF ACTION (Copyright Infringement)

7. Plaintiff incorporates paragraphs "1" through "6" as it set forth at length.

8. The plaintiff is the sole owner of the copyright of an iconic photographic image titled "500 TVs." (See Exhibit 1). Plaintiff has complied with the provisions of the Copyright Act, 17 U.S.C. §101, et seq. (See copyright registration attached as Exhibit 2.)

9. Defendant Apple has had access to the subject photograph and had been warned previously to cease and desist in the creation of unauthorized derivative works of the subject photograph.

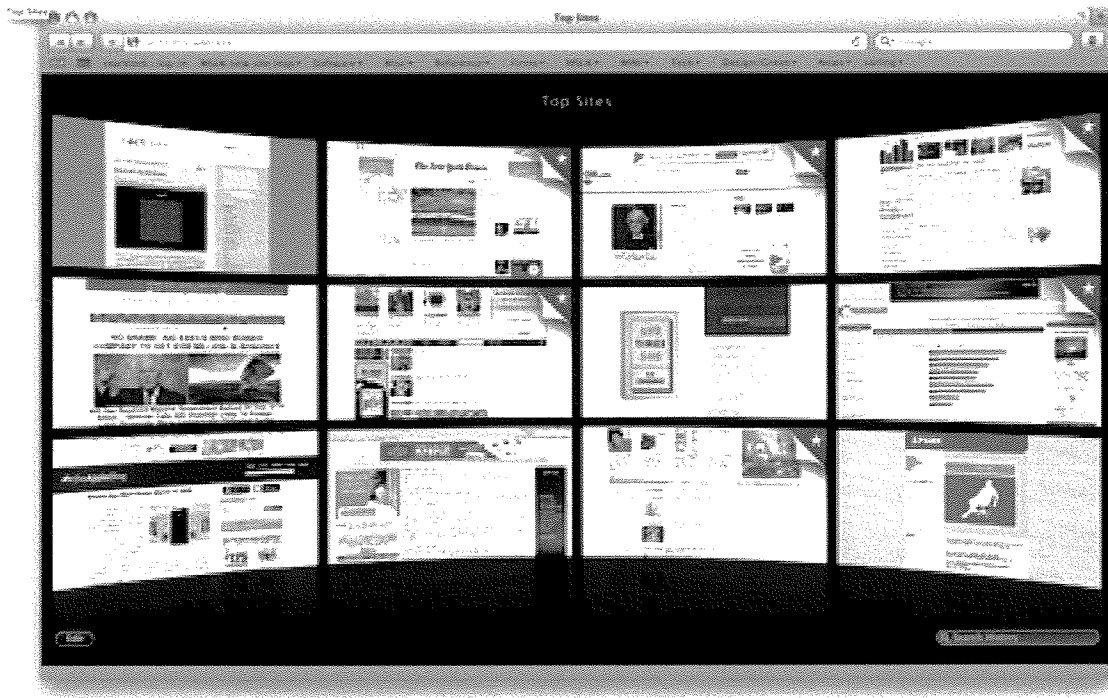
10. The “Top Sites” section on the Leopard generation Safari web browser directly infringes on Mr. Psihoyos’ copyright by incorporating protectable elements of the 500 TVs image without permission.



(Exhibit 1)

11. Without permission or authorization from the plaintiff, defendant Apple has impermissibly used, reproduced, copied, infringed, disseminated or otherwise exploited protectable elements of the plaintiff’s copyrighted image in the Safari browser. *See* “Top Sites” screen shot, attached hereto as “Exhibit 3.”

12. Upon information and belief, defendant Apple has misappropriated protectable elements of the plaintiff’s copyrighted work, as well as elements of previously created derivative works.



(Exhibit 3)

13. By commercially exploiting the plaintiff's copyrighted image without the plaintiff's consent or licensure, defendant Apple has damaged the plaintiff while obtaining significant economic gains in amounts to be determined at trial.

14. Plaintiff is entitled to actual damages including defendants' profits; statutory damages for the infringing use of the 500 TV's; attorney's fees, sustained and which will be sustained, and any other gains, profits and advantages by defendants as a result of defendants' acts of infringement alleged above. At present, the amount of such actual damages, gains, profits and advantages cannot be fully ascertained by plaintiff, but are reasonably believed to exceed \$10,000,000.

PRAYER FOR RELIEF


WHEREFORE, the Plaintiff respectfully prays that this Court enter a final judgment in its favor and against defendant Apple as follows:

- A. That the Court finds that defendant Apple has infringed Plaintiff's copyrighted 500 TVs photograph.
- B. That judgment be entered for plaintiff and against defendants for plaintiff's actual damages and for any profits attributable to infringements of plaintiff's copyright in the 500 TVs photograph, pursuant to Copyright Act 17 U.S.C. §§ 101 et seq.
- C. That judgment be entered for Plaintiff and against Defendants for statutory damages for each for each and every infringing use of the 500 TVs photograph, pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 504(C)(1) and (2).
- D. A jury trial is demanded in this matter.
- E. That the Court grants such other, further and different relief as the Court deems just, proper and equitable under the circumstances.

Dated: September 15, 2009
New York, New York.

Respectfully submitted,

The Nelson Law Firm, PC

By: 
Danial A. Nelson (DN4940)
100 Park Avenue, 18th Floor
New York, N.Y. 10017
T: (646) 704-4900
F: (646) 308-1178

dn@dannelsonlaw.com

Attorney for Plaintiff Louis P. Psihoyos

“Exhibit 2”

FEE CHANGES

Fees are effective through June 30, 2002.
After that date, check the Copyright Office
Website at www.loc.gov/copyright or call
(202) 707-3000 for current fee information.

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SHORT FORM VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE



Registration Number

ATTN: ANDY BERGER

not sent
original
modified

VA

VAU

Effective Date of Registration

Application Received

Deposit Received

One

Two

Fee Received

Examined By

Correspondence

TYPE OR PRINT IN BLACK INK. DO NOT WRITE ABOVE THIS LINE.

Title of This Work:

1

"501 Monitors"

Alternative title or title of
larger work in which this
work was published:

Name and Address of
Author and Owner of the
Copyright:

2

LOUIS PSIHODOS
433 Juniper Ave.
Boulder, CO 80304

Nationality or domicile:
Phone, fax, and email:

Phone (303) 443-3409

Fax (303) 545-9938

Email PSIHODV@aol.com

Year of Creation:

3

1995

If work has been published,
Date and Nation of
Publication:

4

a. Date OCT 21 1996 (Month, day, and
Year all required)

b. Nation U.S.A - TIME MAGAZINE

Type of Authorship
in This Work

Check all that this author created.

5

☐ 3-Dimensional sculpture

☒ Photograph

☐ Map

☐ 2-Dimensional artwork

☐ Jewelry design

☐ Text

☐ Technical drawing

Signature:

6

I certify that the statements made by me in this application are correct to the best of my knowledge.* Check one:

☒ Author ☐ Authorized agent

X

Registration cannot be
completed without a signature.

Name and Address of
Person to Contact for
Rights and Permissions:

Phone, fax, and email:

7

☐ Check here if same as #2 above.

Phone (212) 477 9500

Fax (212) 477 2845

Email matrixfoto@compuserve.com

OPTIONAL

8

Certificate
will be
mailed in
window
envelope to
this address:

Name ▼

JON WELLS, MATRIX

Number/Street/Apt ▼

#46 East 21st Street 3rd floor

City/State/ZIP ▼

New York, N.Y. 10010

Complete this space only
if you currently hold a
Deposit Account in
the Copyright
Office.

9

Deposit Account #

Name

DO NOT WRITE HERE

Page 1 of pages

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

June 1999—100,000

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